HON'BLE SRI JUSTICE GOPALA KRISHNA TAMADA

W.P.No.14933 of 2003

Dated 8th day of August, 2007

Between:

1. N. Babu
2. P.Sampath Kumar ..
Petitioners

And

The Prohibition & Excise Superintendent,
Nellore ..
Respondent

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O R D E R:

This writ petition is filed seeking a mandamus to declare the Notice dated 24.6.2003 issued by the respondent by which the 2nd petitioner is directed to pay differential fee of Rs.1,79,000/- for inclusion and exclusion of his name in the licence for the Excise year 1999-2000 and also the action of the respondent in seeking to initiate action under Revenue Recovery Act, as arbitrary and illegal.

The case of the petitioners in brief is that the 1st petitioner was granted IL 24 Licence for the Excise year 1998-99 by the respondent to sell Indian & Foreign Liquor in retail. He established a shop by name "Sri Sai Kanishka Wines" in Nellore Town. During the year 1999-2000, as he fell sick, he submitted an application to the respondent to add the name of the 2nd petitioner in the licence as a co-licencee so that he could sign in the official papers which are necessary for the purpose of conducting the business. At his request, the respondent, while renewing the licence, added the 2nd petitioner's name as a co-licencee. Now, the petitioners grievance is that when they submitted renewal application for the year 2000-2001, the respondent refused to renew the licence in the names of both the petitioners on the ground that he had no jurisdiction to add any other name in the licence and only issued renewed licence in the name of the 1st petitioner only. Subsequently, his licence was transferred in favour of one M.Ravi Kumar, which effected payment of fee of 10% of licence fee. While so, the respondent issued the impugned Notice dated 24.6.2003 directing the 2nd petitioner to pay the differential fee of Rs.1,79,000/- for inclusion and exclusion of a partner for the year 1999-2000, failing

which, action would be initiated under Revenue Recovery Act.

Though the respondent is served with a notice, he has not filed counter affidavit.

The only contention advanced by the learned counsel for the petitioners is that the impugned Notice, which is in the nature of an order directing the 2nd petitioner to pay the differential amount, was not preceded with any Show Cause Notice calling for his explanation, as such, the action of the respondent is in utter violation of principles of natural justice.

Of course, the learned Government Pleader has stated that the petitioners, without exhausting the remedy of appeal before the Commissioner, have filed this writ petition. However, as the impugned Notice, which is in the nature of an order directing the 2nd petitioner to pay the differential fee for inclusion and exclusion of a partner, was not preceded with any Show Cause Notice calling for the explanation, this Court is not inclined to direct the petitioners to approach the appellate authority.

In the result, this writ petition is allowed and the impugned Notice dated 24.6.2003 is set aside and the respondent-Prohibition and Excise Superintendent is directed to issue a Show Cause Notice to the petitioners calling for their explanation, and the respondent, after considering the objections that may be filed by the petitioners, may pass appropriate orders in accordance with law. No costs.

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08.08.2007

bcj